

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF:

S & R ONE, INC.

UST NO. 198914940

**ADMINISTRATIVE
ORDER**

2011-UT- 02

**TO: Sean Singh Chinna, President
S & R One, Inc.
130 South Roosevelt Road
Burlington, Iowa 52601**

I. SUMMARY

The Iowa Department of Natural Resources (Department) issues this Administrative Order (Order) to S & R One, Inc. (S & R) to address regulatory violations regarding proper inventory control methods, leak detection equipment testing, and related record keeping requirements. This Order requires payment of a penalty of \$3,690 within 60 days of receipt of this Order. See Sections IV and V below for additional details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Terry Jones
Iowa Department of Natural Resources
Field Office 6
1023 West Madison Street
Washington, Iowa 52353-1623
Ph: 319-653-2135

Appeal, if any, addressed to:

Director, Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-5965
aaron.brees@dnr.iowa.gov

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
S & R ONE, INC.

II. JURISDICTION

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Department to issue any order necessary to secure compliance with Iowa Code chapter 455B, Division IV, Part 8 and Department rules contained in chapter 567 Iowa Administrative Code (IAC) 135. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. S & R is the registered owner and/or operator of a facility containing three 10,000 gallon petroleum underground storage tanks (USTs) located at 130 South Roosevelt Avenue, Burlington, Iowa 52610. This facility is a convenience store engaged in the retail sale of gasoline.
2. On October 5, 2010, Terry Jones of Department Field Office 6 visited the facility and informed the attendant of the need to submit the most recent twelve months of Site Inventory Reconciliation (SIR) analysis records, the most recent twelve months of monthly line tightness test results, and the most recent annual function test results of the RLM 4000 electronic line leak detector.
3. On October 11, 2010, Terry Jones spoke to Sean Chinna, president of S & R, regarding the issues described above. Mr. Chinna stated that the SIR analysis was in the process of being completed and that the twelve months of line tightness test results would be faxed to the Department in the next few days.
4. On October 14, 2010, Mr. Chinna provided the most recent twelve months of line tightness test results. The results were manually recorded with an initial entry of October 2009. No results for the annual line leak detector function test or the previous twelve months of SIR analysis were provided.
5. On October 21, 2010, the Department issued a Notice of Violation (NOV) to Mr. Chinna for failure to conduct acceptable release detection monitoring, failure to conduct annual line leak detector testing, and failure to maintain release detection records. The NOV required Mr. Chinna to provide the most recent twelve months of SIR analysis and the most recent line leak detector test dated prior to the October 5, 2010 site visit, to the Department by November 15, 2010. Mr. Chinna failed to provide this information by the deadline.
6. On November 19, 2010, Terry Jones contacted Mr. Chinna regarding the lack of SIR results and again directed him to conduct a line leak detector test.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
S & R ONE, INC.

7. On November 23, 2010, Jones contacted Mr. Chinna to inform him that a fax received by the Department did not contain the correct information regarding SIR results. An onsite meeting to examine the SIR results was scheduled for November 24, 2010.
8. On November 24, 2010, Department staff Terry Jones and Aaron Pickens met Mr. Chinna at the facility location. Mr. Chinna provided the most recent twelve months of SIR analysis. The line leak detection test was again discussed and Mr. Chinna stated that he would have the test conducted.
9. On December 13, 2010, Terry Jones sent Mr. Chinna a letter stating that release detection (SIR) monitoring had not been conducted once every thirty days as required, the Department had still not received the annual line leak detector results, and that the matter was being referred to the Department's Legal Services Bureau (Legal) for enforcement action.
10. On March 18, 2011, Mr. Chinna provided results for the annual line leak detector function test dated December 28, 2010. This test was conducted two months after Mr. Jones first requested the test results and two weeks after Mr. Chinna was informed that he was being referred to Legal for enforcement action.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the Underground Storage Tank (UST) program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state, and this regulatory program is necessary to adequately address this concern. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, corrective action, and reporting and record keeping requirements applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 IAC chapters 135 and 136.
2. Iowa Code section 455B.471(6) defines an "owner" of USTs. S & R is an owner of USTs at the above referenced facility and has been at all times relevant to this Order.
3. Iowa Code section 455B.471(5) defines "operator" of USTs as "...a person in control of, or having responsibility for, the daily operation of the underground storage tank." S & R is an operator of the above referenced facility and has been at all times relevant to this Order.
4. 567 IAC 135.5(2)(a) requires that USTs "...must be monitored at least every 30 days for releases..." by an inventory control method listed in 567 IAC 135.5(4)(d-h) such as SIR. S & R did not submit its monthly SIR data for the period October 2009 – October 2010 for third-party analysis until after the Department's October 15, 2010 site visit when

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
S & R ONE, INC.

these records were requested but not available. SIR data must be submitted for analysis on a monthly basis in order to demonstrate compliance with the 30 day release monitoring rule. S & R's failure to do so is a violation of 567 IAC 135.5(2)(a).

5. An owner or operator of an UST is required to conduct "an annual test of the operation of the leak detector in accordance with the manufacturer's requirements" under 567 IAC 135.5(2)(b)(1)(I) and 567 IAC 135.5(5)(a). S & R violated this rule by failing to conduct a test in 2009, as evidenced by its inability to produce test results and Mr. Chinna's statements to Department staff confirming that the test was not conducted.

6. The Department requested monthly SIR and annual leak detector function test results on multiple occasions beginning on October 5, 2010. SIR results were not provided until November 24, 2010. The extensive delay in producing the SIR records and the year 2010 function test results are violations of 567 IAC 135.4(5)(b) and 567 IAC 135.5(6) which require the owner and operator to maintain records of "compliance with release detection requirements" and 567 IAC 135.4(5)(c) which requires those records be available for immediate inspection by the Department at the UST site or a readily available alternative site.

V. ORDER

THEREFORE, the Department orders S & R to do the following:

1. S & R shall pay an administrative penalty of \$3,690 to the order of the Iowa Department of Natural Resources within 60 days of receipt of this Order.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code sections 455B.109 and 455B.476 authorize the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 IAC 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. The administrative penalty is determined as follows:

ECONOMIC BENEFIT: S & R has been the owner of the facility since July 21, 2008. S & R conducted SIR analysis, although late, for the period October 2009-October 2010. S & R did not conduct SIR analysis during the period July 2008-September 2009, totaling 14 months. SIR costs are \$20 per tank per month. This facility

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
S & R ONE, INC.

has three tanks, resulting in a monthly cost of \$60. Fourteen months at \$60 per month results in an avoided cost of \$840. Annual line leak detector testing costs approximately \$400. S & R failed to conduct these tests in 2009 for an avoided cost of \$400. The total economic benefit penalty factor is assessed at \$1,240.

GRAVITY: Failure to conduct timely release detection monitoring and properly test release detection equipment creates conditions under which a release from an UST system could go undetected. Failure to conduct the above listed monitoring and testing, and the failure to timely respond to or correct these issues, threatens the integrity of the overall UST regulatory program. For this factor, \$1,000 is assessed.

CULPABILITY: S & R was informed on multiple occasions of the need to conduct an annual line leak detection equipment test, yet failed to take action to remedy this situation. While all owners and/or operators of UST sites are expected to know the relevant rules and requirements, Mr. Chinna is not new to the UST business, and has had years to learn these most basic of UST rules. For this factor, \$1,450 is assessed.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476 and 561 IAC 7, as adopted by reference by 567 IAC 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC 7.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.477. Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order.



ROGER L. LANDE, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 14th day of April, 2011

S&R One Inc; Terry Jones, Field Office 6; Aaron Brees; V(B), V(L)